

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/882,834 Confirmation No.: 9209
Appellant(s): Laughlin et al.
Filed: June 15, 2001
Art Unit: 3627
Examiner: Ade, Oger Garcia
Title: MIN/MAX INVENTORY CONTROL SYSTEM AND ASSOCIATED
METHOD AND COMPUTER PROGRAM PRODUCT

Docket No.: 038190/208850
Customer No.: 00826

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REPLY BRIEF UNDER 37 CFR § 1.193(b)(1)

This Reply Brief is filed pursuant to 37 CFR §1.193(b)(1) and is filed in response to the Examiner's Answer of September 7, 2007, the Examiner's Answer being in response to an Appeal Brief filed May 17, 2007. This Brief addresses a number of points arising from the Appeal Brief, as well as the Examiner's Answer to the same.

7. ***Argument.***

As explained in Appellants' Appeal Brief of May 17, 2007, independent Claim 1, and by dependency Claims 2-10 and 59, is patentably distinct from Cruse and Shipman, taken individually or in any proper combination. Appellants also respectfully submit that independent Claim 11 recites subject matter similar to that of independent Claim 1; and as such, independent Claim 11, and by dependency Claims 12-20 and 60, is patentably distinct from Cruse and Shipman, taken individually or in any proper combination, for at least the same reasons given with respect to independent Claim 1. Appellants further respectfully submit that various ones of dependent Claims 2-10, 12-20, 59 and 60 recite subject matter further patentably distinct from Cruse and Shipman, taken individually or in any proper combination.

Initially, Appellants note that the Examiner has failed to establish *prima facie* anticipation or obviousness of any of the dependent claims of the present application. As stated in the MPEP, establishing *prima facie* obviousness of the claimed invention requires the cited reference(s) to explicitly or inherently teach each and every element of the claimed invention. MPEP § 2143.03, *citing In re Royka*, 490 F.2d 981 (CCPA 1974). In the instant case, however, the Examiner has failed to particularly allege any prior art, including Cruse, Shipman or any other prior art, that teach or suggest all of the elements of any of Claims 2-10, 12-20, 59 and 60. More particularly, other than a general allegation that Claims 2-10, 12-20, 59 and 60 are unpatentable over Cruse in view of Shipman, the Examiner has failed to provide any support in either Cruse or Shipmen for that allegation.

A. *Claims 2 and 12*

Dependent Claims 2 and 12 recite that an additional amount of product is provided to the customer independent of a purchase order associated with the additional amount. As explained in response to the second Official Action of April 28, 2005, in contrast to dependent Claims 2 and 12, in all embodiments of the system disclosed by Cruse, customer inventory is replenished from processed orders received from the customer, or remote sites/base site of the customer. Response to Official Action, Jul. 27, 2005, page 6. Even in the min/max model disclosed in paragraph [0092] of Cruse, the system automatically reorders inventory upon reaching a minimum. The Examiner concedes as much in the Examiner's Answer, at least at page 3, lines 11-12; and at page 5, lines 15-21 ("Cruse discloses a method ... with the steps of: ... sending a purchase order from the database to a supplier responsive of the information associated with at least one stock"). Likewise, as Shipman deals with manufacturer inventory control (controlling inventory produced by a manufacturer), Shipman does not teach or suggest any customer inventory control through the supply of additional amounts of a product from supplier to customer, with or without a purchase order.

B. *Claims 3 and 13*

Dependent Claims 3 and 13 recite that maintaining the product inventory count further

includes storing the product inventory count in an electronic file, and transferring the electronic file to the supplier location to facilitate monitoring the product inventory count at the supplier location. Monitoring the product inventory count, then, includes monitoring the electronic file. This feature is also missing from Cruse and Shipman, taken individually or in any proper combination.

As explained in response to the first Official Action and in greater detail below, instead of monitoring customer inventory at a supplier location (remote from the customer location), at best one could argue that Cruse discloses monitoring customer inventory at a customer's remote locations, and sending barcode information (indicating inventory) from the customer's remote sites to a base site of the customer. Amendment, February 18, 2005, pages 9-11. One could also argue that Cruse discloses placing an order for additional inventory from a vendor. In no instance, however, does Cruse teach or suggest that an electronic file including a product inventory count is sent to the supplier location. At best, one could argue that Cruse discloses the customer sending a purchase order for an additional amount of a product; but an additional amount of a product does not correspond to an inventory count of the customer. And again, as Shipman deals with manufacturer inventory control (controlling inventory produced by a manufacturer), Shipman does not teach or suggest any customer inventory control through sending a customer's inventory count to a supplier location.

C. Claims 59 and 60

Depending from Claims 2 and 12, respectively, Claims 59 and 60 recite that the product inventory count is less than the upper limit and within the acceptable inventory range once the respective customer receives the additional amount, which is also not taught or suggested by Cruse or Shipman, taken individually or in combination. Cruse may disclose a Min/Max model whereby a user specifies Min/Max levels, and whereby the system automatically reorders upon reaching the Min level. Even considering such a disclosure, however, Cruse does not explicitly or inherently disclose that the disclosed system reorders new inventory such that, on receiving the new inventory, the customer's inventory count is within the Min/Max levels but less than the Max level, similar to Claims 59 and 60. And as Shipman does not deal with a customer

receiving additional amount of a product (instead dealing with a manufacturer producing an additional amount of a product), Shipman likewise does not teach or suggest the feature of Claims 59 and 60.

For at least the foregoing reasons, as well as those presented in their Appeal Brief, Appellants respectfully submit that Claims 2, 3, 12, 13, 59 and 60 are patentably distinct from Cruse and Shipman, taken individually or in any proper combination.

10. Response to Argument.

In section 10 of the Examiner's Answer, the Examiner initially noted with disagreement Appellants' argument that Cruse does not teach or suggest monitoring inventory of a consumer at a supplier location (remote from the customer location) such that the supplier is capable of detecting when product inventory counts approach a lower inventory limit. Appellants, however, are quite perplexed by this assertion by the Examiner given that not only did the final Official Action of June 8, 2006 (page 3, lines 15-20) concede that Cruse does not teach or suggest this feature of the claimed invention, but the Examiner's Answer itself repeats this concession (page 4, lines 9-14). That is, at the aforementioned passages in the final Official Action and Examiner's Answer, the Examiner concedes that:

... Cruse fails to explicitly disclose ... monitoring the product inventory count at a supplier location such that the supplier is capable of detecting when the product inventory counts approach the respective lower limits,

Two pages later in the Examiner's Answer, however, the Examiner states:

... The Appellants argue Cruse does not teach or suggest "monitoring inventory of a consumer at a supplier location (remote from the customer location) such that the supplier is capable of detecting when product inventory counts approach a lower inventory limit". Contrary to appellant's assertion

To the extent that the Examiner is contradicting him/herself, Appellants question the extent to which Appellants are prejudiced to effectively reply to an Examiner's Answer that at one point concedes that a reference does not teach or suggest a claimed feature, and at another point alleges that the respective reference does teach the respective claimed feature. However, to the extent that the Examiner believes that the Answer does not contradict a prior position taken as to Cruse, but merely alleges that Cruse discloses remotely monitoring inventory of a customer,

Appellants submit that even if one could argue that Cruse discloses remotely monitoring inventory, Cruse still does not teach or suggest monitoring customer inventory by a remote supplier, similar to the claimed invention. Rather, Cruse at best discloses a customer's base site monitoring inventory at remote sites of that customer.

As explained in response to the first Official Action (*see* Amendment, February 18, 2005, pages 9-11), consider the interpretation of Cruse given by the Examiner solely for the sake of comparison. That is, consider vendors (125, 135) of Cruse as corresponding to the supplier of the claimed invention, and the customer having several remote sites (110(1, 2, 3, 4)) disclosed by Cruse as corresponding to the customer of the claimed invention. Thus, following the interpretation of the Examiner, for Cruse to anticipate the aforementioned feature of the claimed invention, Cruse must disclose monitoring inventory of the consumer at the vendor location (remote from the customer location) such that the vendor is capable of detecting when product inventory counts approach a lower inventory limit. However, Cruse does not disclose monitoring the customer inventory at the vendor location, but instead monitoring the customer inventory at a customer location.

More particularly, as disclosed by Cruse, inventory of a customer or remote site of a customer is monitored by means of barcodes associated with the customer's inventory. The barcode information is then forwarded to an inventory computer of a respective remote site. Then, when the customer's inventory is depleted, the inventory computer sends a request for reorder to a respective vendor. Cruse, paragraphs [0029] – [0030]. Thus, in this instance, inventory is monitored at the customer's remote location, as opposed by the vendor's location. Cruse also discloses that the barcode information may be sent from the remote sites to a base site, from which an order is placed with a respective vendor. Even in this instance, however, Cruse does not teach or suggest that inventory is monitored at the vendor's location, the base site being associated with the customer and not the vendor. *See id.* at FIG. 3A. Therefore, Cruse does not teach or suggest monitoring inventory of a consumer at a supplier location (remote from the customer location) such that the supplier is capable of detecting when product inventory counts approach a lower inventory limit, as recited by independent Claim 1.


For at least the reasons given above, as well as those presented in the Appellant's Appeal Brief, Appellants respectfully submit that Claims 1-9, 11-19, 59 and 60 are patentably distinct from Cruse and Shipman, taken individually or in combination.

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CONCLUSION

For at least the foregoing reasons, as well as those presented in the Appeal Brief, Appellants respectfully request that the rejections be reversed.

Respectfully submitted,


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